

POOL OPERATIONS AGREEMENT BETWEEN WEST ST. PAUL AND YMCA OF THE NORTH

This Agreement (“Agreement”) made this _____ day of _____, 2023 (“Effective Date”) is made between the City of West St. Paul, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118 (“City”) and the YMCA of the North, 651 Nicollet Mall Suite 500, Minneapolis, MN 55402 (“YMCA”).

RECITALS

WHEREAS, the City of West St. Paul desires to engage the services of the YMCA to perform the staffing, operations and management of the West St. Paul Municipal Pool; and

WHEREAS, the YMCA is experienced in providing such services and is willing to provide the personnel to perform such services in exchange for the mutual promises as set forth in this Agreement.

NOW THEREFORE, the parties mutually agree as follows:

ARTICLE 1 DEFINITIONS

The following terms, unless elsewhere specifically defined herein, shall have the following meanings as set forth below.

- 1.1 **City.** “City” means the City of West St. Paul, a municipal corporation.
- 1.2 **ISD 197.** “ISD 197” means Independent School District 197.
- 1.3 **Net Revenue.** “Net Revenue” means the total revenue for season passes, gate sales, and all rentals, less applicable sales tax. Net Revenue shall not include concessions sales.
- 1.4 **Pool.** “Pool” means the outdoor swimming pool, splash pool, and bathhouse/concessions building, located at 92 West Orme, West St. Paul, Minnesota.
- 1.5 **Pool Season.** “Pool Season” means April 1 through September 1.
- 1.6 **YMCA.** “YMCA” means the YMCA of the North, a non-profit corporation.

ARTICLE 2 TERM

- 2.1 The Term of the Agreement shall be for one (1) year, commencing on the Effective Date of this Agreement and terminating one (1) year thereafter.
- 2.2 This Agreement shall automatically renew for additional one-year terms, up to two (2) years, under the terms and conditions set forth in this Agreement, unless either party gives written

notice of its intent to renegotiate or not to renew to the other party at least 60 days prior to the end of the initial term or any subsequent renewal term.

ARTICLE 3

FEES

- 3.1 The YMCA shall collect, deposit and retain an accurate accounting for all Net Revenue it generates from season passes, gate sales, and rentals for the Pool. The YMCA shall retain all Net Revenue that is collected during the Pool Season.
- 3.2 If the Net Revenue generated during the Pool Season is less than \$72,000, the YMCA shall retain all of the Net Revenue generated for that Pool Season.
- 3.3 The City agrees to pay the YMCA for any shortfall in Net Revenue, up to \$35,000, that is less than \$72,000.
- 3.4 After the Pool Season, the YMCA shall prepare an accounting of all Net Revenue it collected during the Pool Season and submit the accounting to the City's Finance Director by October 15.
- 3.5 Within 15 days after the accounting is received, the City shall provide a statement to the YMCA that:
 - 3.5.1 Provides the total Net Revenue generated during the Pool Season; and
 - 3.5.2 Includes any payment due to the YMCA pursuant to Section 3.3.
- 3.6 If payment is due to the YMCA pursuant to Section 3.3, the City shall remit payment to the YMCA within 15 days after it provides the statement.

ARTICLE 4

DUTIES AND RESPONSIBILITIES

- 4.1 YMCA agrees to provide its own personnel and to perform the promises and services as described on Exhibit A, attached hereto and incorporated herein. Such services shall include general management, operations and development of the Pool, as well as other services as agreed to by the parties.
- 4.2 City agrees to provide the promises and services as described on Exhibit B, attached hereto and incorporated herein, as well as other services as agreed to by the parties.
- 4.3 The YMCA is not responsible for the operations of the concession stand and will not be held liable for any food related illnesses or incidents arising from the sale or consumption of food from the concession stand.

ARTICLE 5 INSURANCE

- 5.1 During the term of this Agreement, YMCA shall maintain in full force and effect the insurance coverages as required below
 - 5.1.1 Commercial General Liability Insurance with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. Such policy shall add the City as an additional insured; and
 - 5.1.2 Worker's Compensation insurance as required by law.
- 5.2 YMCA shall provide the City with a certificate of insurance for the policies required in this Agreement naming the City as a co-insured.
- 5.3 During the term of this agreement, the City shall maintain in full force and effect the insurance coverages as required below
 - 5.3.1 Commercial General Liability Insurance with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate. An umbrella coverage is acceptable.
 - 5.3.2 Property Insurance with minimum limits of \$1,000,000 to cover all facilities including the pool, pool deck and concessions
 - 5.3.3 Worker's Compensation insurance as required by law for all employees not covered by the services outlined above as provided by the YMCA.
- 5.4 The City will provide a certificate of insurance naming the YMCA as a co-insured for all policies outlined above.

ARTICLE 6 INDEMNIFICATION AND IMMUNITIES

- 6.1 Each party shall save and protect, hold harmless, indemnify and defend each other and each other's officers and employees, against any and all claims, causes of action, suits, liabilities, losses, charges, damages or costs and expenses, including all reasonable attorney's fees, arising from, or allegedly arising from, or resulting directly or indirectly from each indemnifying parties' own professional errors and omissions and/or negligent or willful acts or omissions, in the performance of this Agreement.
- 6.2 Nothing in this Agreement shall be deemed a waiver by the City of any statutory liability limits or immunities set forth in Minnesota Statutes, Chapter 466.

ARTICLE 7

TERMINATION

- 7.1 Either party may terminate this Agreement without cause by giving at least 60 days' advanced written notice. If terminated by the YMCA, the date of termination shall be selected to cause the least disruption to the operation of the Pool.
- 7.2 Either party may terminate this Agreement for failing to perform a term, condition or requirement of this Agreement by giving at least 10 days' advanced written notice to the defaulting party. After receipt of such notice, the defaulting party shall have 10 days to cure the default.
- 7.3 If either party is in default and the default is such that it poses a threat to the health, safety or welfare of the citizens of West St. Paul, as reasonably determined by the non-defaulting party, the non-defaulting party may take any immediate steps it determines are necessary to cure the default, including closing the Pool. In this event, this Agreement shall terminate immediately upon notice to the defaulting party. The defaulting party shall pay all costs and expenses incurred by the non-defaulting for taking any corrective action.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.1 Notices. Any notice required to be given pursuant to this Agreement shall be made in writing and addressed as follows:

If to the City: City Manager
 City of West St. Paul
 1616 Humboldt Avenue
 West St. Paul, MN 55118

If to YMCA: Executive Director
 YMCA of the North
 Eagan YMCA
 550 Opperman Drive
 Eagan, MN 55123

- 8.2 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreement of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

- 8.3 Independent Contractor Status. All services provided by the YMCA, its officers, agents and employees pursuant to this Agreement shall be provided as employees of the YMCA or as independent contractors of the YMCA and not as employees of the City for any purpose.
- 8.4 Assignment. This Agreement is not assignable without the mutual written agreement of the parties.
- 8.5 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Minnesota.
- 8.6 Severability. If any term of this Agreement is found be void or invalid, such invalidity shall not affect the remaining terms of this Agreement, which shall continue in full force and effect.
- 8.7 Data Practices Compliance. All data collected by the parties pursuant to this Agreement shall be subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF WEST ST. PAUL

YMCA OF THE NORTH

David Napier, Mayor

By: _____
Its: _____

Nate Burkett, City Manager

EXHIBIT A

DUTIES AND RESPONSIBILITIES OF YMCA

1. Operate the Pool to standards that are acceptable to both parties, utilizing its own personnel for all operations related to the Pool, including lifeguards, sales, and all other services related to operation of the Pool that are contemplated by this Agreement. The YMCA will be solely responsible for hiring the personnel it deems appropriate for successful operations.
2. During the Pool Season, be responsible for the collection of fees for season passes, gate passes and rental of the Pool.
3. Operate the Pool for eleven (11) weeks in the summer unless otherwise agreed upon by the parties in writing. The Pool will open on the Saturday following the last day of school for Dist. 197 and close on Sunday, eleven weeks thereafter.
4. The YMCA will assume the on-going daily responsibility for the following:
 - a. Including required pool chemical testing and alerting the City if adjustments need to be made; and
 - b. Daily cleaning of the bathhouse building and any outdoor seating areas.
5. Work with ISD 197 to support their needs for rental and use of the Pool outside of daily Pool hours, as the City has done in previous years.
6. The City and YMCA will jointly promote the Pool. All sales of season passes will be sold by the YMCA, pursuant to the rental and season pass rates as established by the City, with input from the YMCA.
7. The YMCA will cooperate with the City on management and operational decisions during the term of this Agreement.
8. The YMCA can have its insurance carrier evaluate the Pool for safety. If the insurance carrier requests any improvements and modifications that are not complied with by the City, the YMCA will have the right to terminate this Agreement pursuant to Section 7.2.

EXHIBIT B

DUTIES AND RESPONSIBILITIES OF CITY

1. At least one week prior to opening the Pool, the City shall:
 - a. Ensure the Pool has the maintenance, Pool supplies, equipment, and furnishings necessary to be operational;
 - b. Obtain all appropriate licenses to operate the Pool; and
 - c. Conduct staff training, with the YMCA, on proper use and care of all pool equipment.
2. The City agrees that the Pool will be heated to a temperature of 82 degrees for the leisure pool and 84 degrees for the splash pool.
3. The City will ensure that the Pool is equipped with the proper drains and other necessary requirements to comply with all federal, state, and local laws including, but not limited to, the Virginia Graeme Baker Pool and Safety Act and the Abigail Taylor Pool Safety Act.
4. The City will assume the on-going cost for the following:
 - a. All utilities, such as phones, natural gas, trash, and electricity;
 - b. All Pool chemicals;
 - c. Property insurance;
 - d. Property upkeep such as lawn maintenance;
 - e. All appropriate fees mandated by City, federal or state law as related to the Pool; and
 - f. All major maintenance repairs.
5. The City and YMCA will jointly promote the Pool. The City will work with the YMCA to establish rental and season pass rates.
6. The City will provide the YMCA with all relevant program materials, policies and procedures so that it may provide quality service.
7. The City will allow the YMCA to display temporary signage at the Pool promoting the YMCA, pursuant to City Code.
8. The City will publish and include the YMCA's information as it relates to operating the Pool in all appropriate summer brochures and on the City's website.
9. The cost of any reduced rates shall be established by the City, with input from the YMCA. YMCA member's rates must not be less than resident rates.
9. The City will operate, staff and fully stock the concessions stand to provide quality service.